

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
1:11cv125-RJC**

CLYDE RONALD LUMBARD,

Plaintiff,

v.

**ALBERT K. KUHNE, M.D., Marion Cor-
rectional Institution¹
(FNU) MEDFORD, Head Nurse, MCI;
PAULA SMITH, Head Physician, North Caro-
lina Department of Corrections; and
NORTH CAROLINA DEPARTMENT OF
CORRECTIONS,

Defendants.**

ORDER

THIS MATTER is before the Court upon Plaintiff's civil rights Complaint brought pursuant to 42 U.S.C. § 1983 (Doc. No. 1); his Motion for Injunctive Relief (Doc. No. 4); and his Motions for Voluntary Dismissal (Doc. Nos. 5 and 8).

On May 23, 2011, Plaintiff filed a civil rights Complaint seeking to challenge his medical care at MCI. (Doc. No. 1). Such Complaint concedes that Plaintiff did not present his claims to MCI through its administrative grievance procedures. (*Id.* at 3-8). Having comprehended the consequences of his failure to exhaust his claims, on July 1 and July 11, 2011, Plaintiff filed Motions for Voluntary Dismissal seeking a dismissal of his Complaint without prejudice to his right to re-file his case after fully exhausting his administrative remedies. (Doc Nos. 5 and 8).

As Rule 41 of the Federal Rules of Civil Procedure provides, subject to certain limitations not applicable here, a plaintiff "may dismiss an action without a court order by filing a notice of

¹ Marion Correctional Institution will hereinafter be referred to as "MCI."

dismissal before the opposing party serves either an answer or a motion for summary judgment” Fed. R. Civ. P 41(a)(1)(A)(i). Because Defendants have not yet been directed by the Court to respond to Plaintiff’s allegations, Plaintiff is entitled to dismiss his case as a matter of right. See Finley Lines Joint Protective Bd. et al. v. Norfolk Southern Corp., et al., 109 F.3d 993, 995 (4th Cir. 1997). Accordingly, the Court will grant Plaintiff’s first Motion for Voluntary Dismissal and will dismiss the second Motion along with his Motion for Injunctive Relief as moot.

IT IS, THEREFORE, ORDERED that:

1. Plaintiff’s Motion for Injunctive Relief (Doc. No. 4) is **DISMISSED as moot**;
2. Plaintiff’s first Motion for Voluntary Dismissal (Doc. No. 5) is **GRANTED**;
3. Plaintiff’s second Motion for Voluntary Dismissal (Doc. No. 8) is **DISMISSED as moot**;
4. Plaintiff’s Complaint is **DISMISSED without prejudice**.

Signed: July 28, 2011



Robert J. Conrad, Jr.
Chief United States District Judge

